

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

75-2099

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

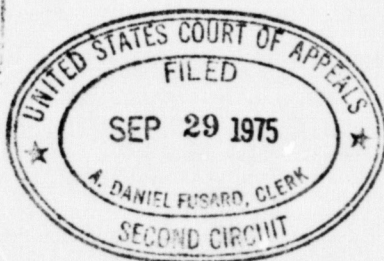
-against-

WILLIAM ROVENDRO,

Appellant.

*On Appeal From The United States District
Court For The Eastern District Of New York*

Appellant's Appendix



MARTIN ELEFANT
Attorney for Appellant
16 Court Street
Brooklyn, N.Y. 11241
624-2240

PAGINATION AS IN ORIGINAL COPY

APPENDICES FOR
PETITIONER-APPELLANT

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DIST/OFFICE	DOCKET YR. NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	C	DEMAND OTHER	JUDGE NUMBER	JURY DEM	DOCKET YR. NUMBER
207-1	75C 200	02 07 75	1	510						908X		RAYFEL, I.
PLAINTIFFS						DEFENDANTS						

UNITED STATES OF AMERICA

Rovendro, William
William Rovendro

Pursuant to Sec. 2255
(Related Case 71-CR-1147)

CAUSE

ATTORNEYS

DAVID G. TRAGER
U.S. ATTORNEY
225 Cadman Plaza-East
Brooklyn, N.Y. 11201

WILLIAM ROVENDRO
#75366-158 Pro Se
Pembroke Station
Danbury Ct 06810
Appointed by the Court:
MARTIN ELEFANT, ESQ.,
16 Court St., Bklyn., N.Y.
11241

1A

<input checked="" type="checkbox"/> CHECK RECEIVED CASE WAS FILED FOR RECORD JUL 10 1975 FBI NEW YORK	FILING FEES PAID		STATISTICAL CARDS	
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UNITED STATES OF AMERICA vs. WILLIAM ROVENDRO

PROCEEDINGS

DATE	NR		
2-7-75		MOTION FILED (Pursuant to Sec. 2255- Re: 71-Cr-1147)	(1)
5-1-75		Affidavit of JOAN S. O'BRIEN, Assistant U.S. Atty., filed in opposition., etc.	(2)
5-2-75		Memorandum filed in support of petitioner's request, etc.	(3)
5-9-75		Petition of Joan S. O'Brien, Assistant U.S. Atty., filed for a writ, etc.	(4)
5-9-75		Writ issued (returnable June 9, 1975)	(5)
6-11-75		WRIT returned and filed.	
6-10-75		Before RAYFIELD, J. Case called. re motion pursuant to Sec. 2255- DECISION RESERVED. Government cited U.S. vs. Rich, Slip Op. 862 Fed. 2d, Circuit, 4-22-75.	
6-16-75		BY RAYFIELD, J. APPLICATION IS DENIED. This decision constitutes an ORDER. The Clerk is directed to file a timely notice of appeal in petitioner's behalf. (See Order)	(6)
6-17-75		Copy 5 Voucher filed - Copy 4 mailed to Administrative office	(6a)
6-18-75		BY THE CLERK: JUDGMENT FILED. ORDERED and Adjudged that the petitioner take NOTHING of the respondent and that the petition is DISMISSED.	(7)
6-18-75		NOTICE OF APPEAL FILED.	(8)
6-19-75		Copy 2 (Voucher re payment(\$320) sent to U.S.C.A. for approval.	(9)
6-24-75		Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A.	
6-24-75		Copy of instructions re appeal, etc., together with forms C and D	
		of this day mailed to MARTIN ELIFANT, ESQ., 16 Court St., Court of Appeals for petition or herein.	
7-11-75		Copy of Civil Appeal Scheduling Order filed.	(10)
8-19-75		Stenographer's transcript dtd 6-10-75 filed.	(11)

APPENDIX B-PETITION

(SAME TITLE)

Case No. 75-C-200

PETITION FOR WRIT OF HABEAS CORPUS UNDER
TITLE 28, UNITED STATES CODE, SECTION 2255,
PROCEEDINGS FOR SENTENCED FEDERAL PRISONERS,
TO VACATE SENTENCE. IN FORMA PAUPERIS
(NORTH CAROLINA v. PIERCE) (89 S.Ct. 2072)

Comes now the Petitioner herein named William Rovendro, who respectfully submits he is being held under duress and restraint in the Federal Correctional Institution, Danbury, Connecticut, under no valid process of the State Constitution and contrary to the Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments afforded all citizens of the Constitution of the United States.

Petitioner respectfully requests the appointment of proper counsel to aid and argue this, his petition for Writ of Habeas Corpus under 2255 proceedings to vacate sentence. Petitioner states and deposes he is without stocks, bonds, funds, and securities and is only a layman of the law and for the above reasons is entitled to pursue respectfully in forma pauperis in the above-named Honorable Court, for the following reasons:

ALLEGATIONS

ALLEGATION NUMBER ONE: Petitioner contends that on or about July 1971 he was arrested in Queens County, New York,

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at J.F.K. Airport by Airport Security Police for "Suspicion, Criminal Possession of Stolen Property," namely, a 1971 Cadillac automobile and a 1968 Buick automobile, and was detained by said Security Police under this charge until federal agents arrived.

ALLEGATION NUMBER TWO: Petitioner contends that on or about July 1971 at the J.F.K. Airport, New York, and on the same day this Petitioner was arrested by Airport Security Police and detained awaiting federal agents on an alleged "Suspicion of Criminal Possession of Stolen Property" about four federal agents arrived in answer to a call by the Airport Security Police (names unknown), sat down with this Petitioner and his two codefendants, William Rowe and Christopher Espinosa, and attempted to have all three individuals, one at a time, confess to having stolen one of the cars (Buick) from the State of New Jersey. At no time was this Petitioner given his Constitutional Rights, as required by United States Supreme Court, handed down in the Miranda Decision, and at no time does this Petitioner recall having signed any paper allowing federal agents to question him or to continue questioning him without the presence of counsel and/or advice of counsel. Petitioner was asked various questions, such as, "Are you part of a car ring?" Petitioner respondent, "No." The federal agents then stated they did not want any part of the case and would then and there turn

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the case over to the State of New York. At no time did the federal agents produce any warrant or book (mug and/or fingerprint) the Petitioner on any charge.

ALLEGATION NUMBER THREE: Petitioner contends that on the same day he was arrested at J.F.K. Airport he was taken to a State Magistrate and formally charged with "Criminal Possession of Stolen Property" and released on bail. On or about September 30, 1971, he appeared in Queens Supreme Court, New York, entered a plea of Guilty to aforementioned charge. Presentence investigation was ordered. The reason this Petitioner entered a plea of Guilty in the State Court was because of a plea bargain guaranteeing a sentence of no more than one year. On or about October 12, 1971, Petitioner was arrested at his home, 952 Post Avenue, Staten Island, New York, by a number of federal agents. Removed from his home and taken to U.S. Federal Building, Manhattan, New York, he was booked (fingerprints and mug shots taken) on "Interstate Transportation of a Stolen Motor Vehicle," namely, a 1968 Buick, the same vehicle as the one whereby Petitioner had already pled guilty in New York State Court.

ALLEGATION NUMBER FOUR: Petitioner contends that on or about October 13, 1971, he was taken from the Federal Building, Manhattan, to U.S. Magistrate Dooling in Brooklyn, Eastern District of New York, and released on a \$10,000

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bond. On or about January 28, 1972, Petitioner was sentenced in State Court, Queens, New York, to a term of one year and was incarcerated. On or about February 4, 1972, Staten Island New York Supreme Court sentenced him on a like charge, "Criminal Possession of Stolen Property," to three years, concurrent. On or about April 1973, Petitioner was removed from Sing Sing Prison, New York State, and taken to U.S. Federal Detention Headquarters, West Street, Manhattan, New York, remained a couple of days, and was taken to U.S. District Court, Eastern District of New York, before Honorable Leo Rayfiel, Judge, for the purpose of a pretrial conference, arraignment and trial. Petitioner entered a plea of guilty to 71-CR-1147 at this time; however, his court-appointed counsel was not present, but his associate and partner, Mr. Preminger, who had no knowledge whatsoever of this case, nor of a plea bargain which had been consummated between the Petitioner's appointed counsel, Mr. Marvin Light and U.S. Attorney Mr. Favorito, whereby this Petitioner was to have received a concurrent sentence; furthermore, Mr. Preminger was acting merely as a stand-in temporary attorney for the absent Mr. Light. (See attached transcript pages 7, 8, 9: The following took place in Chambers and open Court; Appearances Robert A. Morse, U.S. Attorney, by Miss Joan O'Brien, Assistant U.S. Attorney; Marvin Preminger, Esq., Attorney Temporarily Representing Rovendro and Espinosa; Mark Landsman,

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Esq., Attorney for Rowe. Comment by the Court. See also pages 14, 15, Mr. Preminger, Miss O'Brien, and the Court.) The reason for direction of the Court's attention to the various pages is to show that the Court itself recognized the similarity between New York State charges and the United States charges. (Also see Mr. Preminger's statement on page 14. See the Court's statement on page 15, wherein there appears to be controversy as to whether or not a conviction could have been had without previous agreement between Attorney Light and U.S. Attorney Favorito.)

As the court can see through various arguments and statements between the participants in the In-Chambers Meeting, there was controversy on this point. Therefore, Petitioner refers the Court's attention not only to pages 7, 8, 9, 14, 15, but to the overall in-Chambers meetings and minutes.

Court's attention is then referred to page 17 and open court session and the overall minutes. (See "The Court," bottom of page 20 and "Mr. Preminger," page 21, 22, 23, and "The Court," page 21, 22, 23, and "Defendant Rovendro" at page 22 and 23. In all, see all Court proceedings in Open Court.)

Because of the various statements contained therein throughout, this Petitioner contends that he was denied adequate counsel, was denied a fair hearing, was

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subjected to conflict of interest, was subjected to a prejudiced judge who appeared in too much of a hurry to complete the proceedings, was in effect totally unprepared to completely enter any kind of plea at this particular time and in effect coercion did in fact exist. (F.R.Cr.P. 44(a), 44(b); F.R.Cr.P. 32(c), 32(d); F.R.Cr.P. 14, F.R.Cr.P. 8(b), and F.R.Cr.P. 5.)

ALLEGATION NUMBER FIVE: Petitioner contends that sometime between October 13, 1971, and January 1972, Mr. Martin Light was assigned by the Honorable Leo Rayfiel to represent him and Codefendant Christopher Espinosa. Petitioner had several conferences with his court-appointed attorney in regards to his pending trial in federal court. Petitioner contends that his counsel was not present at the pretrial conference nor at his trial. Because of his failing to be present, Petitioner was in effect denied adequate counsel. Further agreement of counsel, Mr. Preminger, to represent this petitioner and Codefendant Espinosa came through futile efforts to have separate counsel; hence, through coercion. It was also at this time that the false and incomplete presentence report was to enter the picture and on this presentence report the Court based its decision in regard to Petitioner being a drug addict. The presentence report stated this, when in fact Petitioner could prove he was an addict. The sentence, therefore, should be vacated on this issue alone. (F.R.Cr.P. 32(c)(2).)

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ALLEGATION NUMBER SIX: Petitioner contends that on or about June 15, 1973 (See 71-CR-1142 and Minutes thereof), he appeared for sentencing in the U.S. District Court for the Eastern District of New York, before Hon. Leo F. Rayfield, Judge, along with Attorney Martin Light. At this time, the Petitioner attempted to withdraw his plea of Guilty and re-enter his plea of Not Guilty (See all minutes and especially page 3), but was refused by the Court and this in effect was harmful error not harmless error on the part of the presiding judge of the Court. At this stage the record can show Petitioner was denied a fair trial, in that once again there has been a change in attorneys; in short, the left had never had full knowledge of what the right hand was doing, and thereby this Petitioner was in finality the injured party. (F.R.C.P. (c) (2)).

CONCLUSION

Petitioner contends that he was not given his Constitutional Rights afforded by the Miranda Decision: the Government failed to live up to a Plea Bargain; he was represented by inadequate counsel; he was subjected to conflict of interest, denied a fair trial, subjected to a prejudiced trial and a prejudiced judge, and all proceedings, and his plea was entered because of coercion. He was denied his right to withdraw a guilty plea prior to sentencing which

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was based on an untrue and incomplete presentence report,
and he was subject to double jeopardy.

Because of the aforementioned facts, this Petitioner
is entitled to a "Vacation of Sentence" forthwith. Petitioner
has appealed and appeal was denied in lieu of formal mandate.
Petitioner has filed for reduction of sentence and was denied.
Petitioner has filed no other motions or petitions for writs.
(See further Minutes of 71 CR 1142, page 28, "The Court."
As reference for contents of this Petition, see minutes of
71 CR 1147 and 71 CR 1142.)

Petitioner respectfully prays the above-named
Honorable Court will accept and grant this, his Petition
for Writ of Habeas Corpus under 2255 Proceedings to Vacate
Sentence and Order this Petitioner's sentence to be vacated
forthwith and Order a date for an evidentiary hearing to be
held forthwith and Order this Petitioner released forthwith
from all custody and restraint.

Respectfully submitted,

WILLIAM ROVENDRO #75366-158
PEMBROKE STATION
DANBURY CT. 06810

Subscribed and sworn to before me

this day of , 1975.

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

WILLIAM ROVENDRO,

Petitioner,

75 C 200

- against -

UNITED STATES OF AMERICA, et al.,
and J. J. NORTON, Warden, F.C.I.,
Danbury, Connecticut,

Respondents.

-----x

Appearances:

HONORABLE DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: JOAN A. O'BRIEN
Assistant United States Attorney, of Counsel
For Respondents

MARTIN ELEFANT, Esq.
Attorney for Petitioner

RAYFIEL, J.

In this proceeding, pursuant to 28 U.S.C. 2255, a plenary hearing has been held. At the hearing, the petitioner, the attorneys who defended him in the criminal action, and the Assistant United States Attorney who prosecuted that action, all testified. After hearing the evidence presented, and the plea for clemency by petitioner's counsel, this court

is constrained to find that the evidence is utterly inadequate to warrant the relief sought.

It is clear that petitioner was adequately represented by counsel who appeared for him in defense of the indictment, and conducted petitioner's appeal from this court's denial of his application for leave to withdraw his plea of guilty. It is likewise clear, from the evidence, that petitioner's plea of guilty was not induced by any promises made by any attorney in the case, and that the plea was entirely voluntary. There was no claim of any promise or inducement by the court. Petitioner was also adequately represented by counsel, assigned to him in this proceeding, who submitted a well-prepared memorandum of law in support of the petition, and competently represented petitioner at the hearing.

In the petition, numerous charges were made by petitioner. No evidence was offered at the hearing regarding most of these charges. The evidence that was offered was insufficient to support the charges to which the evidence was relevant.

The application is denied. This decision constitutes an ORDER. The Clerk is directed to file a timely notice

of appeal in petitioner's behalf.

Dated: Brooklyn, New York
June 16, 1973



U. S. D. J.

ELEFANT US v. Rovendro
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STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 29 day of Sept. , 1975 deponent served the within Appendix upon Hon. David Trager, U.S. Atty., East. Dist. of N.Y.

attorney(s) for
Appellee

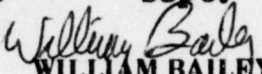
in this action, at

225 Cadman Plaza East, Brooklyn, N.Y. 11201

the address(es) designated by said attorney(s) for that purpose by depositing¹ true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


.....
ROBERT BAILEY

Sworn to before me, this
29 day of Sept. , 1975.


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976